

EDWARD WALKER,)
)
 Plaintiff,)
)
 v.) No. 4:07CV893 CDP
)
 CORRECTIONAL MEDICAL)
 SERVICES, et al.,)
)
 Defendants.)

This matter is before the Court for review of plaintiff's pro se complaint pursuant to 28 U.S.C. § 1915 and for calculation of an initial filing fee. After reviewing the complaint, the Court finds that it survives review and should not be dismissed before service of process. However, the complaint has been drafted in an irregular manner and without any numbered paragraphs, making it impossible for defendants to properly construct an answer. Because of the complexity of the facts of this case, the Court finds that counsel should be appointed to represent plaintiff. As a result, the Court will, in a separate order, appoint counsel to represent plaintiff, and counsel will be allowed 60 days to file an amended complaint.

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma

pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$25.00, and an average monthly balance of \$3.50. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$5.00, which is 20 percent of plaintiff's average monthly deposit.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon

which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff brings this action under 42 U.S.C. § 1983 for alleged indifference to his medical needs in violation of the Eighth Amendment. Plaintiff alleges that he has thyroid cancer and hyperthyroidism and that defendants have refused to give him adequate medical care or a proper diet. Plaintiff claims that, as a result of the lack of care and proper nutrition, he has suffered from “thyroid storms,” a life-threatening

condition.¹

The complaint survives review under 28 U.S.C. § 1915(e)(2)(B) and should not be dismissed before service of process. However, the Court will not order defendants to respond to the complaint at this time. Appointed counsel shall have 60 days to file an amended complaint. After the Court receives an amended complaint, it will order defendants to respond in accordance with the Federal Rules of Civil Procedure.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$5.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.


IT IS FURTHER ORDERED that if plaintiff fails to pay the initial partial filing fee within thirty (30) days of the date of this Order without good cause shown,

¹A thyroid storm "is an uncommon but frightening complication which occurs as a life-endangering augmentation of the signs and symptoms of hyperthyroidism. The phenomenon . . . is characterized by a high fever and marked tachycardia, prostration and severe dehydration." Attorneys' Medical Advisor § 113:28.

then this case may be dismissed without prejudice.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint at this time.

Dated this 30th day of May, 2007.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE